IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 32120 of 2006(W)

PETITIONER:

S. NAJEEB RAWTHER,
SHALIMAR MANZIL, KADAKKAMON,
PATHANAPURAM (REPRESENTED BY ATTORNEY)

BY ADV. SRI.S. ABDUL RAZZAK

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
   CIVIL STATION, KOLLAM.

2. SPECIAL TAHSILDAR (LA),
   NATIONAL HIGHWAYS, KOLLAM.

BY GOVERNMENT PLEADER ADV. SHRI L.G. SURESH BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext. P1	:	PHOTO COPY OF AWARD NOTICE DATED 09.05.2006 IN LAC. NO. 103/2006.
Ext. P2	:	PHOTOCOPY OF AWARD NOTICE DATED 09.05.2006 IN LAC NO. 115/2006.
Ext. P3	:	PHOTOCOPY OF APPLICATION DATED 09.06.2006 FOR REFERENCE UNDER SECTION 18.
Ext. P4	:	PHOTOCOPY OF APPLICATION DATED 09.06.2006 FOR REFERENCE UNDER SECTION 18.
Ext. P5	:	PHOTOCOPY OF POSTAL ACKNOWLEDGEMENTS FOR THE RECEIPT OF EXHIBIT P3 & P4 ON 16.06.2006.
Ext. P6	:	PHOTOCOPY OF AWARD IN LAC NO. 103/2006 DATED 09.05.2006.
Ext. P7	:	PHOTOCOPY OF AWARD IN LAC NO. 115/2006 DATED 09.05.2006.
Ext. P8	:	PHOTOCOPY OF JUDGMENT DATED 20.07.2006 IN W.P.(C) NO. 6600/2006(I)
Ext. P9	:	PHOTOCOPY OF APPLICATION DATED 22.09.2006 UNDER SECTION 31(2) IN LAC NO. 103/2006.
Ext. P10.	:	PHOTOCOPY OF APPLICATION DATED 22.09.2006 UNDER SECTION 31(2) IN LAC NO. 115/2006.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

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W.P.(C) No. 32120 OF 2006

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Dated this the 10th January, 2007

J U D G M E N T

Land belonging to the petitioner was acquired for the purpose of widening of Punalur-Ponkunnam road . Notification under section 4(1) of the Land Acquisition Act was published on 09.04.2005. Exts. P6 and P7 awards were passed on 09.05.2006. The grievance voiced by the petitioner is that the amount awarded as compensation is not paid to him and that his applications for reference under section 18 of the Land Acquisition Act have not been disposed of. The petitioner also claims interest at 18% on the amount of compensation. The contention of the petitioner is that there was some dispute regarding the demarcation of the boundaries of the land and he had approached this Court in W.P.(C) 6600 of 2006 which was disposed of as per Ext. P8 judgment dated 20.07.2006. In Ext. P8 judgment it was noticed that the Tahsildar had already initiated proceedings under Rule 43 of the Kerala Survey and Boundaries Rules and therefore it was not necessary to render any finding on the disputed

question of fact. However, it was ordered that till the proceedings are completed, the existing boundaries of the land should not be altered and that further proceedings for acquisition shall be in accordance with the survey and demarcation conducted as per the proceedings initiated under Rule 43 of the Kerala Survey and Boundaries Rules. Ext.P8 judgment and proceedings thereon may not have any relevance in so far as this Writ Petition is concerned. A contention is raised in the counter affidavit by the second respondent that the amount of compensation was not directly paid to the petitioner in view of pendency of the Writ Petition.

2. As stated above, awards were passed on 09.05.2006. Rule 12 (3) of the Land Acquisition (Kerala) Rules (hereinafter referred to as the Rules) states that no award shall be passed unless the Land Acquisition Officer has sufficient funds at his disposal for making payment of compensation or depositing the same into the Treasury or the Court as the case may be. When an award is passed, the Land Acquisition Officer is expected to issue a notice to the awardee under section 12(2) of the Land Acquisition Act . Section 12(2) says that the Collector shall give immediate notice of his award to such of the persons interested as are not present

personally or by their representatives, when the award is made. There is no case in the counter affidavit that the petitioner was present when the award was made. Therefore, it is mandatory that the Collector should issue a notice under section 12(2) of the Act. Rule 13(1) of the Land Acquisition (Kerala) Rules provides for issue of a notice of award in Form No.10(b). Sub rules 1 to 3 of Rule 13 are relevant, which read as follows:

> *"(1) Immediately,after the award is made, the Land Acquisition Officer shall issue a notice of award in Form No. 10(b) . The said notice shall be served on the awardees as well as other persons interested in the land in the manner prescribed in section 45.*
>
> *(2) In case the awardees or their authorised agents fail to appear and accept the award or fail to apply for a reference to court under section 18, the amount due shall be paid into the treasury as Revenue Deposit payable to the persons to whom it is respectively due and vouched for in Form E. A notice intimating the deposit of the amount into the Treasury shall also be served on all the awardees and interested persons in Form No.11.*
>
> *(3) As soon as the payment or deposit of the award is completed, a subsidiary statement in Form 'B' showing the acceptance of award shall be sent to the Accountant General in duplicate. "*

A notice to be issued under section 12(2) of the Act shall be in Form No.10 (b) as provided under Rule 13(1). Form 10(b) contains the following

clause:

> *"You are hereby informed that you should appear either in person or by an authorised agent before the undersigned on.....at.... and receive the amount specified above, failing which the said sum of money will be kept in Revenue Deposit and will bear no interest."*

3. A notice under Form 10(b) gives the first opportunity to the awardee to approach the Land Acquisition Officer to receive the amount of compensation. If he does not receive the compensation as per that notice, the amount of compensation shall be paid into the Treasury as Revenue Deposit and the awardee would not be entitled to claim any interest. Therefore it is clear that the awardee must be given a notice under section 12(2) read with Rule 13 (1) in Form 10(b), if awardee was not present before the Collector at the time of making the award. In the case on hand, no such notice was issued at all. Instead, Exts.P1 and P2 notices dated 09.05.2006 were issued by the Land Acquisition Officer in Form No.11. Form No.11 notice is a notice to be issued under Rule 13(2) of the Rules. .A notice under Form No.11 can be issued only in the contingencies mentioned in Rule 13(2). The Land Acquisition Officer is not entitled to deposit the amount in Treasury unless the requirements of Rule 13(2) are satisfied.

Those requirements are:

> i) the awardees or their authorised agents fail to appear and accept the awards; or
>
> ii) the awardees fail to apply for a reference to court under section 18 of the Land Acquisition Act .

Instead of issuing a notice in Form 10(b), the Land Acquisition Officer has issued Exts. P1 and P2 notices in Form 11 under Rule 13(2). In Form 11 notice, it shall be stated thus:

> *"You are hereby informed that the amount shown above has been deposited in the Treasury as Revenue Deposit."*

Exts.P1 and P2 notices contain such a statement.

4. Rule 13(3) speaks of sending of Form 'B' statement to the Accountant General. In Form 'B' under the head "Particulars of amount entered in column 7 of the award statement" there are four columns numbered as (a) to (d), which are the following:

> a) amount accepted without protest;
>
> b) amount accepted under protect;

> c) amount deposited in court . In this column, the "amount", "court in which deposited" and "reasons for deposit" are to be shown.
>
> d) amount undisbursed owing to non-attendance of the awardee and the Treasury in which it is deposited.

Form 'B' statement would also indicate that the amount can be deposited in the Treasury only due to non-attendance of the awardee to receive the compensation amount. There is no case for the respondents that the petitioner had either refused to accept the amount under protest or that he did not turn up for receiving the amount or that a notice was issued to accept the award. When the Land Acquisition Officer has not complied with the mandatory legal formalities, how can he submit Form 'B' statement showing the correct details to the Accountant General?.

5. It is contended in the counter affidavit that since W.P.(C) 6600 of 2006 was pending, the amount awarded to the petitioner as per Exts. P6 and P7 awards was deposited in the District Treasury, Kollam as Revenue Deposit and it was intimated to the petitioner. The dispute involved in W.P.(C) 6600 of 2006 was absolutely unconnected with the

entitlement of the petitioner to receive the amount of compensation as awarded under Ext. P6 and P7 awards. The question involved in the W.P.(C) was regarding demarcation of land/boundary. Pendency of Writ Petition No.6600 of 2006 was not at all a justifiable ground for the Land Acquisition Officer to abstain himself from issuing a notice in Form 10(b) and from affording an opportunity to the awardee to receive the compensation amount. The Land Acquisition Officer was duty bound to issue a notice under section 12(2) read with Rule 13(1) in Form No.10(b) and the pendency of a Writ Petition between the parties was not at all a ground for not complying with the mandatory statutory formalities.

6. As regards non-payment of compensation, it is stated in paragraph '6' of the counter affidavit thus:

> *"The award amount deposited in Treasury as revenue deposit can be released to the petitioner within one month. The petitioner has already submitted reference application. The reference application can be forwarded to the Court only after the award amount is received under protest*. "

No reasons are stated as to why the award amount was not paid to the petitioner. The reasons stated in the counter affidavit for not considering

the reference application under section 18 of the Land Acquisition Act appears to be quite strange and definitely it is against the Land Acquisition Act and Rules thereunder. Section 18 of the Act entitles the awardee, who has not accepted the award, to make an application in writing to the Collector requiring that the matter be referred for the determination of the court, whether his objection be to the measurement of the land, the amount of compensation , the person to whom it is payable or the apportionment of the compensation . The right of the awardee to file an application for reference can be defeated only when he has received the amount without protest as provided in the second proviso to Section 31(2) of the Land Acquisition Act or on the ground that the application was not submitted within time as provided in Section 18(2) of the Land Acquisition Act . As per clause (b) of the proviso to sub-section (2) of Section 18, the awardee is entitled to file an application for reference within six weeks of the receipt of notice under section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. In the case on hand, no notice under section 12(2) of the Act was issued to the petitioner. Still, Exts P3 and P4 applications were filed by him on

09.06.2006. The applications for reference would itself indicate that the petitioner was not satisfied with the amount awarded. It cannot be assumed that after making an application for reference, he would receive the amount without protest and forfeit his right to have the matter referred under section 18 of the Land Acquisition Act . When an application for reference is made under section 18 of the Land Acquisition Act within the prescribed period of limitation, even if the awardee has not turned up to receive the compensation amount, that does not result in dismissal of the application for reference . The application for reference would be liable to be rejected only if the awardee has received the award amount without protest or when the application was filed belatedly. There is no case for the respondents that the amount was received without protest. There is no case for the respondents that any of the conditions warranting rejection of the application under section 18 of the Land Acquisition Act has been made out. Therefore, the reasons stated in the counter affidavit for not dealing with the application for reference are unsustainable.

7. In Ext. P9 and P10 representations dated 22.09.2006, it is stated by the petitioner that the award was communicated to him only on

07.07.2006 in response to his applications under the Right to Information Act. It is further stated thus:

> *"I am yet to receive any notice regarding payment of the compensation awarded to me . Payment of compensation according to award is not prevented by any one of the contingencies mentioned in Section 31 (2) of the Land Acquisition Act. Any delay hereafter in payment of the compensation awarded or in making the reference under section 18(1) will be unlawful and I will be constrained to initiate appropriate legal action for deliberately delaying the reference applied and payment due"*

Exts. P9 and P10 were addressed to the District Collector with copy to the Land Acquisition Officer. No reply was sent by any of the respondents to the petitioner. Sub rules (1) and (2) of Rule 14 read thus:

> *"(1) The amount required for payment or deposit of the award shall not be drawn by the Land Acquisition Officer in cash. It shall be drawn in favour of the payee by means of printed and machine numbered 'D' form cheques to be obtained from the Treasury on proper indent through the District Collector.*
>
> *(2) The payment relating to an award shall be made or the amount credited to Court or Revenue deposit within one month from the date of the award and in the case of an award made in the month of March it*

shall be paid or deposited before the end of the financial year. ”

8. Sub rule (2) of Rule 14 of the Rules indicates that the compensation amount shall be paid within one month from the date of the award. The Land Acquisition Officer is not entitled to draw the amount in cash. The amount shall be drawn by means of Form 'D' cheque. There is no case for the respondents that Form 'D' cheque was drawn in favour of the petitioner at any point of time. On the other hand, Exts. P1 and P2 as well as counter affidavit would indicate that the amount was deposited in the Treasury on the date of award. When such a deposit is made, it has certain consequences, viz., the awardee would not be entitled to interest thereafter. Since the deposit was not made as per law and since no notice under section 12(2) of the Act in Form No.10(b) was issued to the petitioner, it cannot be said that the petitioner is not entitled to interest on the award amount. Section 34 of the Land Acquisition Act provides that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time

of taking possession until the award amount has been paid or deposited. Proviso to Section 34 states that if the compensation amount is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum shall be payable from the date of expiry of the said period of one year. The petitioner is entitled to get interest as provided under section 34 of the Act.

For the aforesaid reasons, the Writ Petition is allowed in the manner indicated below:

1) respondents shall pay the award amount as per Exts. P6 and P7 awards together with interest payable under section 34 of the Land Acquisition Act within a period of one month from the date of receipt of a copy of this judgment.

2) The second respondent shall dispose of Exts. P3 and P4 reference applications in accordance with law, within a period of six weeks from the date of receipt of

a copy of this judgment. The petitioner shall be duly intimated after disposal of Exts. P3 and P4 applications.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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Dated this the

O/J